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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,007	02/10/2004	David R. Maas	13506-016001	9100

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EXAMINER

BATSON, VICTOR D

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/776,007

Applicant(s)

MAAS ET AL.

Examiner

Victor Batson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-20, 23 and 24 is/are rejected.
- 7) ☒ Claim(s) 9 and 21 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 12/6/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

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Claim Objections

Claims 1-12,15,16 are objected to because of the following informalities: In claim 1 lines 4 & 6, "axel" lacks proper antecedent basis and should be changed to "axle". In claim 3 line 1, and claim 6 line 2, "axel" lacks proper antecedent basis and should be changed to "axle". In claim 15 line 1, "the at least one front support means" lacks proper antecedent basis. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5,7,10,13-17,19 are rejected under 35 U.S.C. 102(b) as being anticipated by McGuire (2,111,478).

McGuire discloses a soil aerator including front and rear axle members (15 & the axles that wheels 13 are mounted to), with the axle members mounted forward and rearward of the aeration device, with the weight transfer system considered the arms 22. The examiner notes that as the arms 22, are raised, the aeration drum pivots forward applying more weight to the front axle, whereas as the arms 22 are lowered, the drum pivots downwardly and rearwardly applying more weight to the rear axle member. Concerning a first spring member, chain 33 is considered the first spring member since it is known that chains (such as those used on bicycles or motorcycles) provide constant

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force transfer under normal circumstances, but also can absorb impact forces by momentarily stretching thereby acting as a spring.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6,8,18,20 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGuire (2,111,478) in view of LeMeur, Jr. et al. (6,425,161).

McGuire discloses a soil aerator as described previously, but lacks using a suspension system with the rear caster wheels.

LeMeur, Jr. et al. teaches that it is known in the art to use a suspension system comprising a caster wheel with a spring member to provide stability and absorb shocks while traveling over rough surfaces (LeMeur, Jr. et al. – col 1).

It would have been obvious to one of ordinary skill in the art to modify the device of McGuire by using a suspension system with the rear wheels to absorb shocks while traveling over rough surfaces as taught by LeMeur, Jr. et al..

Claims 11,12,23,24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGuire (2,111,478) in view of LeMeur, Jr. et al. (6,425,161).

McGuire discloses a soil aerator as described previously, but lacks including a planetary gear system to rotate the tines.

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Cecil et al. teaches that a planetary gear system used to rotate aerator tine shafts is an equivalent structure known in the art. Therefore because these two drive systems were art recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute the drive system of Cecil et al., for the drive system of McGuire.

The tines of McGuire are considered to meet the limitation of having an arcuate soil fracturing edge, since they appear to be cone shaped.

Allowable Subject Matter

Claims 9,21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (571) 272-6987. The examiner can normally be reached on Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 28, 2005

A handwritten signature in black ink, appearing to read "Victor Batson". The signature is fluid and cursive, with the first name "Victor" and last name "Batson" clearly distinguishable.

Victor Batson
Primary Examiner
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